IN THE HIGH COURT OF BOMBAY AT GOA
****

CRIMINAL WRIT PETITION NO. 34 OF 2002

1. Amit Shipmanagement
   Pvt. Ltd.,

2. Shri Harsh Wahi, and

3. Smt. Manjula Wahi,
   office at 408,
   Veena Chambers, Clive
   Road, Mumbai, 400 009. ... Petitioners.

Versus

1. State of Goa, and

2. M/s Aquarius Pvt. Ltd.,
   C-2, Kossambi Bldg.,
   Swatantra Path,
   Vsaco da Gama, goa 403 802. ... Respondents.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D. Bhobe, advocate for the petitioners.

Shri A. P. Lawande, Public Prosecutor for respondent no.1.

Shri J. Godinho, advocate for respondent no.2.

CORAM: P. V. KAKADE, J.

DATE: 10th October, 2002.

ORAL JUDGMENT

Rule. Rule made returnable forthwith.

Heard learned counsel for both the sides. Perused the record. This Writ Petition is moved against the Order passed by the learned J.M.F.C., Vasco da Gama, below Exh.27 in Cri. Case No.32/N/99/B refusing to exercise powers under Section 311 of the Criminal Procedure Code, to recall the witness for the purpose of further cross-examination. the complaint is pending for commission of the offence under Section 138 of the Negotiable Instruments Act. In the

course of the trial after the evidence of the witness was over, the application was moved for further cross-examination of the concerned witness on the ground that it was a case under Section 138 of the Negotiable Instruments Act, 1881, and so it was for the accused to rebut the presumption and, therefore, for that purpose he thought it fit to further cross-examine P.W.1, in that case. After hearing both the parties, the learned Magistrate thought it fit to reject the application on the ground that sufficient opportunity was given to the parties concerned.

2. In this regard, it is to be noted that the cross-examination of P.W.1 was concluded on 25th April, 2001, and it was submitted during the course of the hearing of the said arbitration proceedings on 16th June, 2001, a query was raised by the learned Arbitrator regarding the significance and importance of voyage insurance cover and its effect upon the said agreement entered into between the parties and, therefore, in pursuance of the aforesaid query, the accused no.1 filed additional affidavit on 29th June, 2001, putting on record certain additional documents which were described in detail in the said affidavit. Therefore, it was the case of the petitioner that the said documents were vital documents having immense bearing with regard to the tenability of the complaint made by the complainant against accused no.1 as the documents went to the root of the entire arbitration proceedings. Without referring to

further merits in this regard, I must note that the petitioner has clearly shown the relevance of the documents as well as the necessity for confrontation of such documents to P.W.1 and, therefore, it is necessary that the witness should be recalled for the limited purpose as noted above.

3. The learned Magistrate has also recorded, while rejecting the application, that under the provisions of Section 311 of the Code of Criminal Procedure it is the sole prerogative of the Court to recall the witness, which observation, in my view, is totally erroneous. The learned counsel for the respondents brought to my notice the ruling of the Allahabad High Court in the case of **Tahir & Ors.** vs. **State of U. P.**, (2000) Cri.L.J. 1342, wherein the scope of the provisions of Section 311 of the Code of Criminal Procedure vis-a-vis Section 145 of the Evidence Act, is discussed. However, in my view, the said ruling has no bearing so far as the facts and circumstances involved in this case are concerned.

4. In the result, the Writ Petition is allowed and the Order passed by the learned Magistrate below Exh.27 in Cri.Case no.32/N/99 is hereby set aside. It is directed that P.W.1 in the said case shall be recalled under Section 311 of the Code of Criminal Procedure for the purpose of cross-examination on the limited point raised in the application, Exh. 27. The learned J.M.F.C. is also

directed to expedite the appeal and conclude the hearing within six months from the date of receipt of a copy of this Order.

With this direction, the petition stands disposed of. It is clarified that the observations made herein shall not influence the lower court while adjudicating the dispute on merits.

P. V. KAKADE, J.

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